

Testimony of Dr. Joe Shirley, Jr., President  
The Navajo Nation

Provided to the Senate Committee on Indian Affairs  
Concerning  
Law and Order in Indian Country

March 17, 2008

## **I. The Navajo Nation**

### **a. Background**

The United States signed the Treaty of 1868 with the Navajo Nation, and is the treaty that is often referenced as establishing the formal government-to-government relationship between the Navajo Nation and the United States, which continues today. Subsequent Executive Orders returned more of the traditional homeland to the Navajo Nation. Through these Executive Orders, the current boundaries of the Navajo Nation expand into three (3) States – Arizona, New Mexico, and Utah.

Geographically, the Navajo Nation is the largest federally recognized tribe in the United States with a landbase that covers over 27,000 square miles, comparable to the State of West Virginia. The Navajo Nation has 255,543 tribal members,<sup>1</sup> of which nearly 170,254 reside within the Nation.<sup>2</sup>



The median age of Navajo tribal members is 22 years of age.<sup>3</sup> The Navajo Nation's per capita income is \$6,804.<sup>4</sup> The estimated Navajo Nation unemployment rate is nearly 58 percent (58%).<sup>5</sup> According to the 2000 Census, 31.9 percent (31.9%) of tribal housing lack complete plumbing, 28.1 percent (28.1%) lack complete kitchen facilities, and 60.1 percent (60.1%) lack telephone service.

### **b. Government**

The Navajo Nation's Executive, Legislative and Judicial branches are centrally headquartered in Window Rock, Arizona. The executive branch is headed by a president who is popularly elected to a four year term. There are 14 executive divisions within the executive branch with more than 6,500 employees.

An 88-member popularly elected Council, with 12 standing oversight committees, serves as the legislative branch of the Navajo Nation. The Navajo Nation Council is the body of the Navajo Nation that promulgates laws that govern the Navajo Nation and its tribal members, as well as certain conduct of non-member Indians and non-Indians within the territorial boundaries of the Navajo Nation.

The judicial branch consists of a Navajo Nation Supreme Court, seven district courts, and seven family courts. The Navajo Nation Supreme Court is composed of one chief justice and two associate justices.

### **c. Criminal Jurisdiction on the Navajo Nation**

Crimes committed within the Navajo Nation are under the jurisdiction of the tribal, federal or state governments, depending on the identity of the victim(s) and suspect(s) (i.e., Indian or non-Indian); the seriousness of the offense; and the state in which the offense was committed.

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<sup>1</sup> Navajo Nation Vital Records Office (2001).

<sup>2</sup> United States Census (2000)

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Navajo Nation Economic Development Office.

Federal jurisdiction over crimes committed in the Navajo Nation is codified at 18 USC § 1153 (more commonly referred to as the "Major Crimes Act"). The Major Crimes Act applies to crimes committed in the Navajo Nation. The Major Crimes Act specifies major crimes in Indian country are subject to federal jurisdiction when the offense is committed by, or against, an American Indian. The crimes subject to federal jurisdiction by the Major Crimes act include: murder, manslaughter, kidnapping, maiming, aggravated sexual abuse, sexual abuse, incest, sexual abuse of a minor or ward, attempted rape, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual under the age of 16 years, arson, burglary, robbery, and larceny.

In the absence of federal statutes limiting tribal criminal jurisdiction, the Navajo Nation exercises criminal jurisdiction over non-major crimes committed by tribal members, non-member Indians, and in certain cases, non-Indians. Navajo Nation criminal jurisdiction is generally confined to non-major crimes within the territorial boundaries of the Navajo Nation. These criminal cases are handled by Navajo Nation tribal prosecutors and are tried in Navajo Nation courts.

The States of Arizona, New Mexico, and Utah retain criminal jurisdiction over crimes by non-Indians against non-Indians committed in the respective state boundaries located within Navajo Nation.

### **Criminal Jurisdiction/Crimes Committed in Indian Country**

Identity of Suspect	Identity of Victim	Type of Offense	Criminal Jurisdiction
Indian	Indian or Non-Indian	Major Crimes	Federal
Indian	Indian or Non-Indian	Non-major Crimes	Tribal
Non-Indian	Indian	Any Offense	Federal
Non-Indian	Non-Indian	Any Offense <sup>1</sup>	State

Source: Title 18, Chapter 53, USC § 1152 and § 1153.

<sup>1</sup> Except those crimes normally included under federal jurisdiction.

#### **d. Navajo Nation Crime Data**

In a report to the U.S. Attorney General and the Secretary of the Interior, the former Deputy Attorney General, Kevin V. Di Gregory stated, “there is a public safety crisis in Indian Country. Basic law enforcement protection and services are severely inadequate for most of Indian Country.”<sup>6</sup> Several years later, in 2005, the public safety crisis in Indian Country has grown to epic proportions, most notably in the Navajo Nation.

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<sup>6</sup> Kevin V. Di Gregory, U.S. Deputy Attorney General, Report to the Executive Committee For Indian Country Law Enforcement Improvements (1997).

The Indian Country crime statistics presented by the U.S. Department of Justice in 2000 is a national picture of crime in Indian Country. However, crime statistics in the Navajo Nation provide a clearer snap shot of the challenges the Navajo Nation faces on a daily basis. On any given year, Navajo Nation Law Enforcement answer over 289,000 calls and makes over 39,000 arrests, nearly 1,000 of which are major crimes.<sup>7</sup>

Listed below are the selected 2003 annual crime statistics for the Navajo Nation Department of Law Enforcement presented as a report to the Department of the Interior:

**Navajo Nation Department of Law Enforcement Annual Law Enforcement Report to the Department of Interior for Calendar Year 2003, Selected Crimes\***

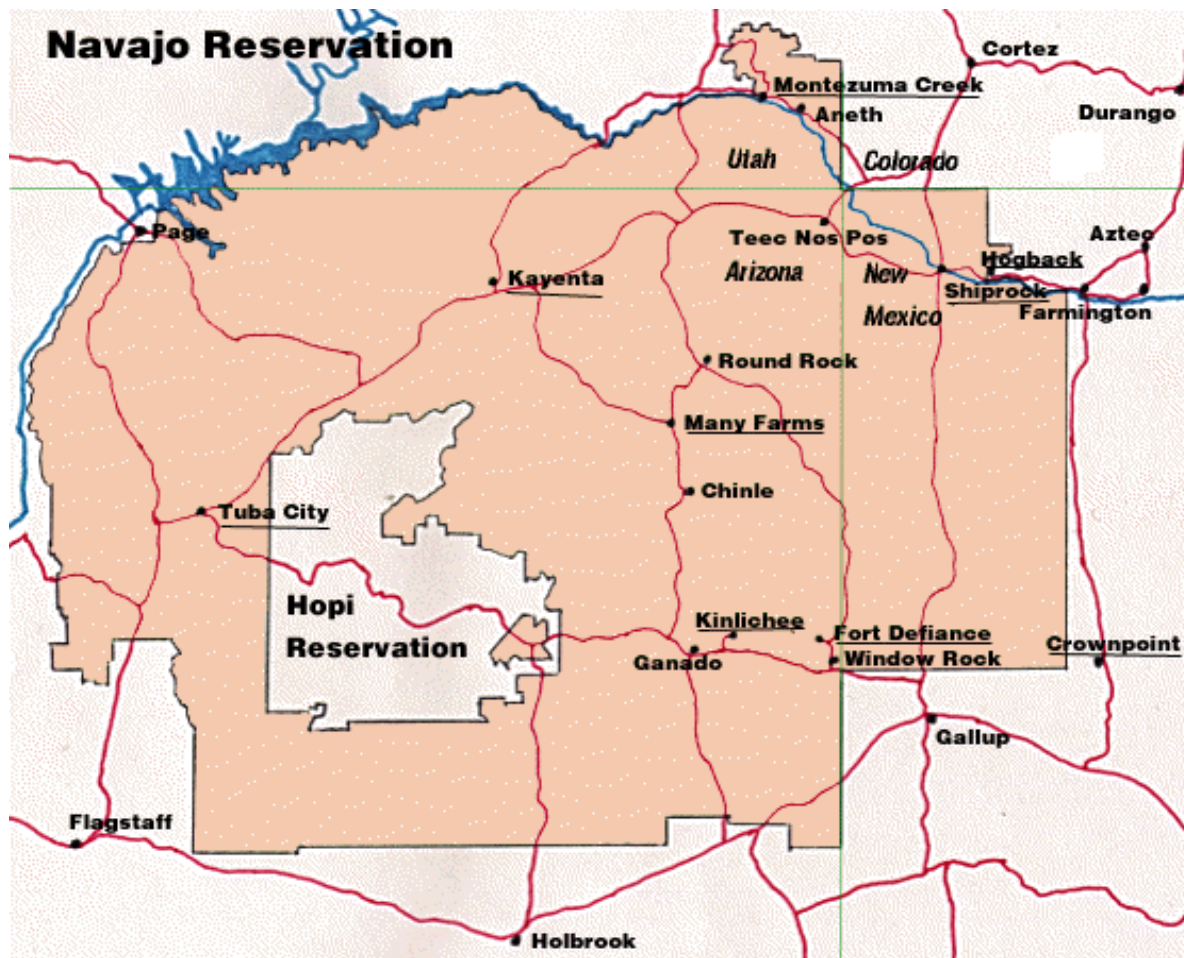
Selected Part One Offenses	Total Offenses CY2003	Cleared by Arrest or Exceptional Means	Alcohol Related CY2003	Drug Related CY2003	Offenses Committed by Juvenile
Homicide-Manslaughter	51	2	22	0	0
Forcible Rape	121	11	55	8	33
Child Abuse	2,554	1,316	1,467	61	202
Domestic Violence	12,253	7,633	7,741	273	386
Robbery-Strong Arm	29	18	13	2	0
Aggravated Assault-Firearm	20	12	18	2	0
Aggravated Assault-Other weapons	244	101	127	2	1
Aggravated Assault-Hands, foot, fists, etc.	6,520	3,149	3,543	105	411
TOTALS	21,792	12,242	12,986	453	1,033

Other Than Part One Offenses	Total Offenses CY2003	Cleared by Arrest or Exceptional Means	Alcohol Related CY2003	Drug Related CY2003	Offenses Committed by Juvenile
Drug Abuse-Possession	1,124	874	391	632	384
Driving While Intoxicated	4,091	4,035	3,759	39	94
Liquor Laws	3,598	3,292	3,168	62	151
Drunkenness	22,119	21,578	20,537	140	637
TOTALS	30,932	29,779	27,850	873	1,266

\* Calendar Year 2004 data is currently being compiled by Navajo Department of Law Enforcement, Information Management Services.

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<sup>7</sup> Navajo Nation Division of Public Safety Statistics.



**NAVAJO DIVISION OF PUBLIC SAFETY**  
Navajo Division of Public Safety STATISTICAL INFORMATION 2000 – 2003

<b>CRIME</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
HOMICIDE	25	23	33	26
SEXUAL OFFENSE	623	728	681	646
ROBBERY	12	18	99	17
ASSAULT	6,799	7,011	7,676	8,069
BURGLARY	1,455	1,454	1,260	1,295
LARCENY	2,036	2,014	1,970	2,229
AUTO THEFT	1,119	1,091	1,244	1,352

#### **e. US Department of Justice and Tribal Law Enforcement**

The United States Department of Justice has a significant role in supporting tribal law enforcement and justice systems, including corrections. Additionally, the Department of Justice also administers federal funds that enable tribes to build the capacity to fight crime and promote public safety.

In a five year span, between 1998 and 2003, the Department of Justice budget authority increased by 23.3 percent (23.3%) while the Department's discretionary budget increased by 5.4 percent (5.4%); during that same period, funding for tribal programs increased by 86.7 percent (86.7%). Regardless, funding for tribal programs remained only 1 percent of the Department's total budget.<sup>8</sup>

Though the Department of Justice is to be applauded for the effort to assist tribal law enforcement, funding for tribal law enforcement and justice systems fluctuate from year to year, and in some cases federal funding is eliminated. The Office of Tribal Justice's tribal detention facility funding serves as a prime example of funding fluctuations. The grant program for tribal jail construction was funded at \$44.4 million in 2002, however, by 2003 funding was reduced to less than \$5 million. In 2004 President Bush's budget requests proposed an elimination of funding for the tribal jail construction grant.<sup>9</sup>

## **II. The Navajo Nation Department of Public Safety**

The Navajo Division of Public Safety has an annual budget of nearly \$60 million with over 700 employees. Navajo Public Safety consists of seven (7) Police Districts and six (6) Adult correctional Facilities. Navajo Public Safety funds are from external sources such as federal funding, approximately eighty six percent (86%), while 14 percent (14%) of Public Safety funds are from Navajo Nation General Funds. The division provides services in the following areas: law enforcement, criminal investigation, corrections, highway safety, and fire and rescue.

#### **a. Public Safety Issues**

The Navajo Nation population grew by 21 percent between 1990 and 2000.<sup>10</sup> The rapid population growth of the Navajo Nation presents ever increasing challenges such as increasing rates of crime. The aging law enforcement infrastructure coupled with inadequate law enforcement resources raises serious concerns for public safety within the Navajo Nation. Public safety is a fundamental element in the preservation of Navajo communities and culture.

#### **i. Navajo Department of Law Enforcement**

The Navajo Department of Law Enforcement currently funded at a staggering low ratio of .06 Police Officers per 1,000 people, compared to the national average of 2.5 per 1,000. Essential services are limited with minimal coverage to carry out the full obligation of "Protecting and Serving" the general public within the jurisdictional boundaries of the Navajo Nation. The Navajo Department of Law Enforcement is committed to providing prudent and prioritized services on a 24 hours basis as demanded by the general public within all Navajo Nation

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<sup>8</sup> The US Civil Rights Commission, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* (July, 2003).

<sup>9</sup> Id.

<sup>10</sup> United States Census (2000)

communities, chapters, businesses, schools, and private entities.

The Navajo Nation must be adequately funded at a level to meet the needs of its growing population. Navajo Nation Law Enforcement Personnel require proper benefits and training, vehicles, updated equipment, communication services and retirement compensation, which most BIA, surrounding states, counties and federal government personnel derived from their respective law enforcement agencies.

The current funding level of \$13,815,224.00 does not provide the basic salary needs for the Law Enforcement personnel for the full fiscal year; in fact, in the current FY 2006, a shortfall of \$6,119,317.00 in salaries is expected. This base law enforcement funding does not address the need for overtime compensation incurred due to the coverage of the vast geographical area. The distance between districts results in longer than normal response time and requires extensive travel time.

The Navajo Nation's current estimated need is approximately 250 additional police officers to meet the level of coverage of 2.5 officers per 1,000 to provide optimal service.

To date, the Navajo Nation has been augmenting operating revenues through funds obtained from sources other than the Bureau of Indian Affairs. Through these funds, Navajo has been able to aggressively recruit and train new officers. Additionally, Navajo has made great progress in initiating technological advances by implementing state of art communication system. These improvements are providing the officers with wireless connectivity virtually from any community in the vast area of coverage. The new equipment will allow for instant retrieval of criminal background information from local, state and federal data bases. Furthermore, the new data capturing system being implemented at the Training Academy requires training for technicians who will be operating the system. It is essential that NDLE be funded at level to achieve its goal of additional officers and sustain the improvements made. Most of the grants will soon be exhausted; consequently, other funding sources will be needed to maintain an adequate number of law enforcement personnel and meet daily operating expenses for officers.

## **ii. Navajo Department of Criminal Investigations**

The Navajo Department of Criminal Investigations (NDCI) is an established and nationally recognized law enforcement program. NDCI is comprised of 54 duly certified criminal investigators that have the inherited responsibility of providing investigative services involving major crimes within the exterior boundaries of the Navajo Nation and Indian Country. NDCI is one of three separate law enforcement programs within the Navajo Division of Public Safety. NDCI collaborates with numerous tribal, city, state and federal programs to address violence against its citizens.

In order to effectively perform the duties and responsibilities of a criminal investigations program several basic needs must be considered and provided, which include maintaining contractual certification requirements, transportation, equipment and salaries. The Department of Interior has an entrusted responsibility to financially support NDCI; furthermore, it must be realized that there truly exists a need for reconsideration of increasing its annual budget amount. NDCI is expecting a shortfall of \$2,721,457 for FY 2006. At present, NDCI is deliberating the

possibility of both commissioned and civilian lay offs for the coming new year. This would severely jeopardize NDCI service capabilities and create an adverse effect for those ongoing investigations.

NDCI is afforded funding from the Navajo Nation General Fund account, but that amount is limited and subject to government priorities. In addition, NDCI has received Grant funding from the United States Department of Justice in the amount of \$202,143 for Gang Violence Interdiction which is restricted to weaponry, ammunition, communication, surveillance, personal protection equipment, and overtime relating to the grant guidelines. The grant is extremely helpful; however, additional funds are needed for personnel salaries, basic operating expenses, forensic investigations, and costs associated with training and travel.

Statistically, violent crimes on the Navajo Nation are not decreasing. The citizens of the Navajo Nation are exposed to numerous negative influences which directly contribute to violent acts. It is imperative that we continue to prosecute those individuals who instigate and perpetuate these types of crimes. Without an effective and intelligent criminal investigations program, the citizens of the Navajo Nation will experience severe hardships.

### **iii. Navajo Department of Corrections**

The Navajo Nation Department of Corrections will operate on a budget of \$2,668,044.00 for FY 2006. The funding provided by P.L. 93-638 covers personnel cost and no operating cost. As a result, in 2005, the Department of Corrections reduced its administrative personnel to the bare minimum and reserves the limited funds for detention personnel and operation.

The Navajo Department of Corrections operates six adult detention facilities located in Window Rock, Chinle, Kayenta, Dilkon, Shiprock and Crownpoint. Three of these facilities are temporary holding facilities for new arrestees, while the other three are used for serving inmates. The National ratio for inmates/officer coverage is 1/10; whereas, Navajo is at 1/493 based on the 2005 statistics. The Navajo Nation Detention facilities operate under a consent decree of mandates which includes square footage per inmate; coverage by 3 officers per shift; 2,200 calorie diet; provision of postage and writing materials; individual hygiene and bedding requirements.

The Department of Corrections served 36,364 individuals in 2005. Each of the six adult detention facilities served on average 6,060 inmates with an average stay of eight days. Due to the limited jail bed spaces, law enforcement officials and the Navajo Nation Tribal Courts release arrested individuals to make room for new arrests.

According to the Navajo Department of Law Enforcement, approximately 289,774 responses were made to calls for services in fiscal year 2004, of which 56,768 were processed by Law Enforcement Officers with some type of report, while 39,289 individuals were arrested. Of the 39,289 arrested, 36,364 were booked into Navajo Detention facilities. An alarming 3,000 individuals who committed a criminal act were not processed into the local jails following arrests due to lack of jail bed spaces. These individuals were arrested and released.



In summary, it is imperative that the Navajo Department of Corrections receive adequate funding to address the ever-growing criminal activities and resultant inmate population within the Navajo Nation. The current funding level is used for personnel cost with no room for cost of living adjustments, additional staffing to adequately operate the six detention facilities. The current funding level does not allow for Navajo to meet the training requirements, medical and required psychological, operating expenses for uniforms and equipment. The Detention facilities were built more than 30 years ago and required extensive repairs and maintenance. Accordingly, operation and maintenance cost of \$3,556,000.00 have been included in the FY 2006 funding request along with personnel cost of \$3,850,615.00 for a total FY 2006 Funding request of \$7,406,615.00.

#### **iv. Navajo Nation Detention Facilities**

Navajo Nation law enforcement make over 38,000 arrests annually yet Navajo Nation detention facilities have bed space for only 103 inmates. Navajo Nation detention facilities have consistently operated more than 60 percent (60%) above capacity. As a result of severely limited space and to create more space for serious offenders, the Navajo Nation criminal justice system is forced to release less serious criminal offenders back into communities.

A federal report on tribal jails stated, “tribal jails fall short of basic professional standards due to a shortage of operating funds, training, and technical assistance...[O]perations are substandard in such critical areas as staff and inmate safety, inmate services and programs, fire safety, communicable disease prevention, sanitation, and hazardous substance control.”<sup>11</sup> While a Department of Interior report stated that tribal detention facilities were “a national disgrace.”<sup>12</sup>

### **III. Navajo Nation Public Safety Requirements**

The Navajo Nation has significant needs in order to best serve and protect the Navajo People.

First, the Navajo Nation requests that Congress double the FY2008 Enacted level of \$14M to \$28M in FY2009 for Bureau of Indian Affairs (BIA) Public Safety Construction and direct the BIA to allocate a fair portion of such funds to tribally-owned/638 Contracted facilities.

Currently the BIA funds only BIA owned and operated detention facilities. The Navajo Nation does not receive any construction funds under this budget line item. The Navajo Nation owns and operates, under a 638 Contract with the BIA, six adult detention facilities located in Window Rock, Chinle, Kayenta, and Dilkon, Arizona, and in Shiprock and Crownpoint, New Mexico. Three of these facilities are temporary holding facilities for new arrestees, while the other three are used for serving inmates. Therefore, in addition to doubling the FY2008 Enacted level for FY2009, the Navajo Nation requests Congress to direct the BIA to allocate a fair portion of the Public Safety Construction funds to tribally-owned/638 contracted facilities.

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<sup>11</sup> The U.S. Civil Rights Commission, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* (July, 2003) citing Office of Tribal Justice, *Report of the Executive Committee for Indian Country Law Enforcement Improvements: Final Report to Attorney General* (October, 1997).

<sup>12</sup> The U.S. Department of Interior and the Bureau of Indian Affairs, *Neither Safe Nor Secure: An Assessment of Indian Detention Facilities* (September, 2004).

Second, the Navajo Nation requests a 20% increase in Bureau of Indian Affairs Operation of Indian Programs Law Enforcement budget over the FY2008 enacted levels in order to accommodate Navajo Nation Law Enforcement Personnel funding request of 8-10% percent over the FY2008 enacted levels

The Navajo Nation requests Congress to increase the BIA Operations of Indian Programs Law Enforcement budget by 20% over the FY2008 Enacted levels in order to accommodate Navajo Nation Law Enforcement Personnel funding request of 8-10% over the FY2008 enacted levels. Further, the Navajo Nation urges Congress to direct the BIA to establish a sound, policy-based funding formula based on population, land base, economic conditions, and law enforcement resources for the distribution of BIA Operation of Indian Programs Law Enforcement funding.

Finally, the Navajo Nation requests that Congress to reject the FY2009 President's Request to consolidate DOJ Tribal Funding and to increase the Department of Justice Tribal COPS budget by 20% and double the FY2008 enacted amount of \$8M to \$16M for Tribal Detention Facilities Construction.

The Navajo Nation requests Congress to maintain its prior fiscal year appropriations decisions to reject the consolidation of DOJ Tribal funding into one consolidated tribal grants program. Instead, the Navajo Nation urges Congress to maintain the current budget structure and increase the Department of Justice's Tribal Community Oriented Policing Services (COPS) FY2009 budget by 20%. Additionally, the Navajo Nation requests Congress to double the FY2008 Enacted amount of \$8M to \$16M for Tribal Detention Facilities Construction.

#### **IV. Conclusion**

The Navajo Nation faces significant challenges in providing for the safety of our Navajo People. The Division of Public Safety has the daunting responsibility to protect the Navajo People and those visiting our land, investigating crimes, and maintaining the Nation's detention facilities. We lack the resources and the manpower to properly secure and police a territory the size of West Virginia with such a large population. As a result, our Navajo People are faced with increased incidences of criminal activity perpetuated by individuals who know we lack the police officers to track them down, and the facilities to detain them. We need your help to address our public safety concerns.